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Chief Clerk of the House

FILED MAR 11 2003

By: _____

Elkins

H.B. No. 2176

A BILL TO BE ENTITLED

AN ACT

relating to ad valorem tax sales of real and personal property
following foreclosure or seizure of the property; authorizing a
sale by on-line auction.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 33.25, Tax Code, is amended to read as
follows:

Sec. 33.25. ~~[NOTICE OF]~~ TAX SALE: NOTICE; METHOD;
DISPOSITION OF PROCEEDS. (a) After ~~[Except as provided by~~
~~Subsection (c), after]~~ a seizure of personal property, the
collector shall make a reasonable inquiry to determine the identity
and to ascertain the address of any person having an interest in the
property other than the person against whom the tax warrant is
issued. The collector shall provide in writing the name and address
of each other person the collector identifies as having an interest
in the property to the peace officer charged with executing the
warrant. The peace officer shall deliver as soon as possible a
written notice stating the time and place of the sale and briefly
describing the property seized to the person against whom the
warrant is issued and to any other person having an interest in the
property whose name and address the collector provided to the peace
officer. The posting of the notice and the sale of the property
shall be conducted by the peace officer:

(1) in the manner required for the sale under

1 execution of personal property; or

2 (2) in the manner provided by Section 34.014.

3 (b) The peace officer charged with selling the property may
4 enter into an agreement with a person who holds an auctioneer's
5 license to advertise the auction sale of the property and to conduct
6 the auction sale of the property. The terms of the agreement
7 entered into by the peace officer with the licensed auctioneer must
8 be approved in writing by the collector of each taxing unit entitled
9 to receive proceeds from the sale of the property. An agreement
10 that is not approved by a collector is voidable by that collector.
11 An agreement entered into under this subsection that is approved by
12 all necessary collectors is presumed to be commercially reasonable
13 and the presumption may not be rebutted by any person.

14 (c) Failure to send or receive a [the] notice required
15 [provided] by this section does not affect the validity of the sale
16 or title to the seized property.

17 (d) The proceeds of a sale of property under this section
18 shall be applied to:

19 (1) any compensation owed to or any expense advanced
20 by the licensed auctioneer under a contract entered into under
21 Subsection (b) or a service provider under an agreement entered
22 into under Section 34.014;

23 (2) all usual costs, expenses, and fees of the seizure
24 and sale, payable to the peace officer conducting the sale;

25 (3) all additional expenses incurred in advertising
26 the sale or in removing, storing, preserving, or safeguarding the
27 seized property pending its sale;

1 (4) all usual court costs payable to the clerk of the
2 court that issued the tax warrant; and

3 (5) taxes, penalties, and interest included in the
4 application for warrant.

5 (e) The peace officer conducting the sale shall pay any
6 excess proceeds after payment of all amounts as required by
7 Subsection (d) in the manner provided in the case of execution.

8 ~~[(c) After a seizure of personal property defined by Sections~~
9 ~~33.21(d)(2)-(5), the collector shall apply the seized property~~
10 ~~toward the payment of the taxes, penalties, and interest included~~
11 ~~in the application for warrant and all costs of the seizure.]~~

12 SECTION 2. Section 34.01(r), Tax Code, is amended to read as
13 follows:

14 (r) Except as provided by this subsection and by Section
15 34.014, a [A] sale of real property under this section must take
16 place at the county courthouse in the county in which the land is
17 located. The commissioners court of the county may designate an
18 [the] area in the county courthouse or another location in the
19 county where sales under this section must take place and shall
20 record any designated area or other location in the real property
21 records of the county. If the commissioners court designates an
22 area in the courthouse or another location in the county for sales,
23 a sale must occur in that area or at that location. If the
24 commissioners court does not designate an area in the courthouse or
25 another location in the county for sales, a sale must occur in the
26 same area in the courthouse that is designated by the commissioners
27 court for the sale of real property under Section 51.002, Property

1 Code.

2 SECTION 3. Subchapter A, Chapter 34, Tax Code, is amended by
3 adding Section 34.014 to read as follows:

4 Sec. 34.014. ON-LINE AUCTION ALTERNATIVE METHOD OF SALE.

5 (a) The commissioners court of a county by official action may
6 authorize an officer of the county charged with selling property
7 under this subchapter or Chapter 33 by public auction to enter into
8 an agreement with a service provider to advertise the auction and to
9 conduct the auction sale of the property using the Internet if the
10 property to be sold is:

11 (1) personal property seized under Subchapter B,
12 Chapter 33;

13 (2) real property seized under Subchapter E, Chapter
14 33;

15 (3) real property being sold under Section 34.01; or

16 (4) real property being resold under Section 34.05.

17 (b) A sale in the manner authorized by Subsection (a) may be
18 conducted only if the collector for each taxing unit entitled to
19 receive proceeds from the sale of the property gives the
20 collector's written consent to the sale and to the terms of the
21 agreement entered into under that subsection. An agreement that is
22 not approved by a collector is voidable by that collector. An
23 agreement entered into under Subsection (a) that is approved by all
24 necessary collectors is presumed to be commercially reasonable, and
25 the presumption may not be rebutted by any person.

26 (c) An agreement entered into under Subsection (a) must
27 include provisions that require the service provider to advertise

1 the property for auction and to organize, post, host, and service
2 the information relating to the advertisement and auction of the
3 property.

4 (d) Advertising of an auction on the Internet must be posted
5 on the Internet at least 30 days before the auction begins and
6 remain posted until the auction is closed. An auction-advertising
7 website shall be developed and maintained to accommodate all
8 necessary aspects of auction advertising as considered necessary or
9 advisable by the officer charged with selling the property.

10 (e) The service provider, at the direction of the officer
11 charged with selling the property, shall develop a web-based
12 marketing effort, disseminate due diligence information on-line to
13 potential bidders, and support the sale of the property.

14 (f) The advertising relating to property to be sold by
15 auction on the Internet must include:

16 (1) a description of each property or lot of property,
17 including any property parcel number, the property address, and the
18 most recent appraised value;

19 (2) photographs of the property, if available;

20 (3) maps depicting the location of real property;

21 (4) a description of any special features of the
22 property;

23 (5) the terms of the auction sale;

24 (6) the minimum acceptable bid for the property;

25 (7) a statement that no representation or warranty is
26 made regarding the property; and

27 (8) any other information considered necessary or

1 advisable by the officer charged with selling the property or the
2 service provider to assist a bidder in making an informed purchase
3 decision.

4 (g) The agreement may require the service provider to assign
5 passwords to registered and prequalified bidders in accordance with
6 criteria for the qualification of bidders adopted by the officer
7 charged with selling the property and structure an auction so that
8 those bidders may bid automatically.

9 (h) The agreement may require the service provider to send
10 notice to registered and prequalified bidders by electronic mail on
11 the occurrence of:

12 (1) the posting on-line of auction-advertising
13 information;

14 (2) the commencement of an auction;

15 (3) the receipt of an initial or a higher bid;

16 (4) the closing of an auction; or

17 (5) the sale of property to a bidder.

18 (i) The agreement may require the service provider to
19 structure the website so as to inform potential bidders of relevant
20 information concerning tax sales of property in this state as
21 required by the officer charged with selling the property or as
22 considered advisable by the service provider. To be eligible to bid
23 on property, a person must acknowledge receipt of the information.

24 (j) The agreement may require that bidders submit a
25 qualifying deposit to the treasurer of the political subdivision or
26 the taxing unit that requested the order of sale in an amount
27 sufficient to demonstrate the bidder's ability to comply with all

1 terms of a sale as a precondition for bidding.

2 (k) The agreement may require the service provider to
3 structure the website so as to enable prequalified bidders who do
4 not have Internet access to submit a bid on the property by
5 telephone, facsimile, or mail.

6 (l) The agreement may require the service provider to
7 structure the website in a manner that permits the officer charged
8 with selling the property or the taxing unit that requested the
9 order of sale to:

10 (1) withdraw or remove one or more properties from the
11 auction advertising for any reason or remove one or more properties
12 from an auction before the opening of bids;

13 (2) reject any bid for any reason; or

14 (3) discontinue or conclude an auction at any time.

15 (m) Each auction shall be continued for a reasonable period
16 as determined by the officer charged with selling the property or
17 the taxing unit that requested the order of sale before the auction
18 and be advertised on the website. The auction may not be
19 discontinued or concluded before the time advertised except at the
20 specific direction of the officer or taxing unit.

21 (n) Except as provided by this section:

22 (1) the provisions of Section 34.01 apply to a sale
23 conducted under this section; and

24 (2) a reference in law to a sale under Section 34.01
25 includes a sale conducted under this section.

26 SECTION 4. This Act takes effect September 1, 2003, and
27 applies only to the sale of tax foreclosed property pursuant to an

1 order of sale issued on or after the effective date of this Act.

HOUSE COMMITTEE REPORT

03 MAY 10 AM 11:00
HOUSE OF REPRESENTATIVES

1st Printing

By: Elkins, Hegar

H.B. No. 2176

Substitute the following for H.B. No. 2176:

By: McReynolds

C.S.H.B. No. 2176

A BILL TO BE ENTITLED

AN ACT

relating to ad valorem tax sales of real and personal property following foreclosure or seizure of the property; authorizing a sale by on-line auction.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 33.25, Tax Code, is amended to read as follows:

Sec. 33.25. ~~[NOTICE OF]~~ TAX SALE: NOTICE; METHOD;
DISPOSITION OF PROCEEDS. (a) After ~~[Except as provided by~~
~~Subsection (c), after]~~ a seizure of personal property, the collector shall make a reasonable inquiry to determine the identity and to ascertain the address of any person having an interest in the property other than the person against whom the tax warrant is issued. The collector shall provide in writing the name and address of each other person the collector identifies as having an interest in the property to the peace officer charged with executing the warrant. The peace officer shall deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person having an interest in the property whose name and address the collector provided to the peace officer. The posting of the notice and the sale of the property shall be conducted:

(1) in a county other than a county to which

1 Subdivision (2) applies, by the peace officer in the manner
2 required for the sale under execution of personal property; or
3 (2) in a county having a population of three million or
4 more:

5 (A) by the peace officer or collector, as
6 specified in the warrant, in the manner required for the sale under
7 execution of personal property; or

8 (B) under an agreement authorized by Subsection
9 (b).

10 (b) The commissioners court of a county having a population
11 of three million or more by official action may authorize a peace
12 officer or the collector for the county charged with selling
13 property under this subchapter by public auction to enter into an
14 agreement with a person who holds an auctioneer's license to
15 advertise the auction sale of the property and to conduct the
16 auction sale of the property. The agreement may provide for on-line
17 bidding and sale.

18 (c) The commissioners court of a county that authorizes a
19 peace officer or the collector for the county to enter into an
20 agreement under Subsection (b) may by official action authorize the
21 peace officer or collector to enter into an agreement with a service
22 provider to advertise the auction and to conduct the auction sale of
23 the property or to accept bids during the auction sale of the
24 property under Subsection (b) using the Internet.

25 (d) The terms of an agreement entered into under Subsection
26 (b) or (c) must be approved in writing by the collector for each
27 taxing unit entitled to receive proceeds from the sale of the

1 property. An agreement entered into under Subsection (b) or (c) is
2 presumed to be commercially reasonable, and the presumption may not
3 be rebutted by any person.

4 (e) Failure to send or receive a [the] notice required
5 [provided] by this section does not affect the validity of the sale
6 or title to the seized property.

7 (f) The proceeds of a sale of property under this section
8 shall be applied to:

9 (1) any compensation owed to or any expense advanced
10 by the licensed auctioneer under an agreement entered into under
11 Subsection (b) or a service provider under an agreement entered
12 into under Subsection (c);

13 (2) all usual costs, expenses, and fees of the seizure
14 and sale, payable to the peace officer conducting the sale;

15 (3) all additional expenses incurred in advertising
16 the sale or in removing, storing, preserving, or safeguarding the
17 seized property pending its sale;

18 (4) all usual court costs payable to the clerk of the
19 court that issued the tax warrant; and

20 (5) taxes, penalties, and interest included in the
21 application for warrant.

22 (g) The peace officer or licensed auctioneer conducting the
23 sale shall pay all proceeds from the sale to the collector
24 designated in the tax warrant for distribution as required by
25 Subsection (f).

26 (h) [-(e)] After a seizure of personal property defined by
27 Sections 33.21(d)(2)-(5), the collector shall apply the seized

1 property toward the payment of the taxes, penalties, and interest
2 included in the application for warrant and all costs of the seizure
3 as required by Subsection (f).

4 SECTION 2. Sections 34.01(a) and (r), Tax Code, are amended
5 to read as follows:

6 (a) Real property [~~Property~~] seized or ordered sold
7 pursuant to foreclosure of a tax lien shall be sold by the officer
8 charged with selling the property, unless otherwise directed by the
9 taxing unit that requested the order of sale or by an authorized
10 agent or attorney for that unit. The sale shall be conducted in the
11 manner similar property is sold under execution except as otherwise
12 provided by this subtitle.

13 (r) Except as provided by this subsection, a [A] sale of
14 real property under this section must take place at the county
15 courthouse in the county in which the land is located. The
16 commissioners court of the county may designate an [~~the~~] area in the
17 county courthouse or another location in the county where sales
18 under this section must take place and shall record any designated
19 area or other location in the real property records of the county.
20 If the commissioners court designates an area in the courthouse or
21 another location in the county for sales, a sale must occur in that
22 area or at that location. If the commissioners court does not
23 designate an area in the courthouse or another location in the
24 county for sales, a sale must occur in the same area in the
25 courthouse that is designated by the commissioners court for the
26 sale of real property under Section 51.002, Property Code.

27 SECTION 3. This Act takes effect September 1, 2003, and

C.S.H.B. No. 2176

1 applies only to the sale of tax foreclosed property pursuant to an
2 order of sale issued on or after the effective date of this Act.

The Honorable Tom Craddick
Speaker of the House of Representatives

5/8/03
(date)

We, your COMMITTEE ON LOCAL GOVERNMENT WAYS AND MEANS

☐ do pass, without amendment.
☐ do pass, with amendment(s).
☒ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
☒ yes ☐ no A fiscal note was requested.
☐ yes ☒ no A criminal justice policy impact statement was requested.
☐ yes ☒ no An equalized educational funding impact statement was requested.
☐ yes ☒ no An actuarial analysis was requested.
☐ yes ☒ no A water development policy impact statement was requested.
☐ yes ☒ no A tax equity note was requested.
☒ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

Co-Sponsors: _____

[illegible]

6 aye
 0 nay
 0 present, not voting
 1 absent

~~CHAIR~~

BILL ANALYSIS

C.S.H.B. 2176

By: Elkins

Local Government Ways and Means

Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently in Texas, Business personal property is seized and sold for delinquent taxes. Often the property sells for less than ten cents on the dollar which also requires much more of the property to be seized to cover the tax liability. This bill provides for a pilot program to be initiated in Harris County to explore the use of professional auctioneers and online/Internet bidding to increase the proceeds from sales.

In addition, the method of selling real property in tax foreclosure sales is through an auction at the courthouse in the county in which the seized property is located. In some counties the courthouses are inadequate to house the sales. Furthermore, in light of heightened security measures in government buildings, having many people crowded into the lobby of a courthouse raises many security and safety issues. In Harris County, the fire marshal was forced to remove persons from a public auction because of overcrowding. This bill also provides for the commissioners court to designate an alternate location for the tax foreclosure sales to ensure a safe and fair auction process.

The intent of CSHB 2176 is to provide a pilot program for the option of using the Internet as a bidding method in selling business property that has been seized for failure to pay taxes, and also provide for the use of professional auctioneers. This bill also allows a county to have flexibility to conduct the auction in a manner that best suits the county and the individuals seeking to participate. It also provides for real property sales to be held at an alternate location within the county if the commissioners court deems it appropriate for security, safety or other reasons.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

CSHB 2176 amend Section 33.25, Tax Code, to provide the commissioners court of counties with a population of three million or more the option to authorize a peace officer or the collector for the county charged with selling property to enter into an agreement with a licensed auctioneer to advertise and conduct a sale of business personal property. The auction may be held online. The terms of the agreement must be approved in writing by the collector for each taxing unit entitled to receive proceeds under the auction and the agreement is entitled to an un rebuttable presumption of commercial reasonableness.

Section 33.25(f) and (g), Tax Code, specify the application of the proceeds of the sale of property under this section.

CSHB 2176 also amends Section 34.01 of the Tax Code by providing a county with the option to relocate the auction to another venue, within the county, that is able to occupy a greater number of people.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 2176 modifies the original version of the bill by removing language that raised concerns regarding the advertising and the bidding method of the auction for real property. CSHB 2176 maintains the integrity of the original version by allowing a county, with a population greater than 3 million, to test the online method of bidding in conjunction with the current live auction for business property, if the county elects to do so.

SUMMARY OF COMMITTEE ACTION

HB 2176

May 8, 2003 8:00AM

Considered in public hearing
Committee substitute considered in committee
Testimony taken in committee (See attached witness list.)
Recommended to be sent to Local & Consent
Reported favorably as substituted

WITNESS LIST

HB 2176
HOUSE COMMITTEE REPORT
Local Government Ways and Means Committee

May 8, 2003 - 8:00AM

For: Smith, Jacqueline Lucci (Harris County Tax Office)
Against: Lacey, Captain Cecil (Self and Harris County Pct #4
Constable's Dept)
On: Hart, Dan (Self and TEA)

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 8, 2003

TO: Honorable Fred Hill, Chair, House Committee on Local Government Ways and Means

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2176** by Elkins (Relating to ad valorem tax sales of real and personal property following foreclosure or seizure of the property; authorizing a sale by on-line auction.), **Committee Report 1st House, Substituted**

| |
|---|
| No fiscal implication to the State is anticipated. |
|---|

The bill would permit the Harris County Commissioners Court to authorize a peace office or collector for the county charged with selling property at a property tax foreclosure sale to contract with a licensed auctioneer to advertise and conduct the auction for sale of business personal property. The bill would permit the peace office or collector to contract with a provider to advertise and conduct the auction for sale of business personal property using the Internet. The bill would also allow Harris County to designate an area other than the county courthouse for the sale of foreclosed business personal property. Since the bill would not change taxable property values reported by the Comptroller to the Commissioner of Education, no fiscal impact to the State is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JK, SD, WP, DLBe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 22, 2003

TO: Honorable Fred Hill, Chair, House Committee on Local Government Ways and Means

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2176 by Elkins (Relating to ad valorem tax sales of real and personal property following foreclosure or seizure of the property; authorizing a sale by on-line auction.), **As Introduced**

| |
|---|
| No fiscal implication to the State is anticipated. |
|---|

The bill would permit the sheriff or peace officer selling property at a property tax foreclosure sale to contract with a licensed auctioneer to advertise and conduct the auction for sale of the property. The bill would also permit the sheriff or peace officer selling property at a foreclosure sale to contract with a provider to advertise and conduct the auction for sale of property using the Internet. The bill would require payment of compensation and expenses to an auctioneer or Internet service provider before payment of other costs of foreclosure. Since the bill would not change taxable property values reported by the Comptroller to the Commissioner of Education, no fiscal impact to the State is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JK, SD, WP, DLBe

for chief clerk use only

Bill or Resolution Number:

HB 2176

JOINT AUTHOR AUTHORIZATION

As primary author of ^{HB 2176}
ELKINS I hereby authorize the following joint author(s):
(bill or resolution #)

Glenn Hagar
printed name of joint author #1

[Signature]
signature of joint author #1

4/30/04

printed name of joint author #2

signature of joint author #2

printed name of joint author #3

signature of joint author #3

printed name of joint author #4

signature of joint author #4

[Signature]
signature of primary author

4/30/04
date

H.B. No. 2174

A BILL TO BE ENTITLED
AN ACT

By Elkins

relating to ad valorem tax sales of real and personal property following foreclosure or seizure of the property;
authorizing a sale by on-line auction.

MAR 11 2003

Filed with the Chief Clerk

MAR 17 2003

Read first time and referred to Committee on Local Government Ways and Means

MAY 08 2003

Reported favorably (~~unfavorably~~)
(as substituted)

MAY 10 2003

Sent to Committee on ~~(unfavorable)~~
(Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Engrossed

Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

Received from the House

Read and referred to Committee on _____

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

Read third time, _____, and passed by (a viva voce vote)
(_____ yeas, _____ nays)

Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,
_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)

CC MAY 10 11 00

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